Community Development Department
Planning Division Building Safety Division Environmental Soils Division

P.O. Box 6005 117 NW Lafayette Avenue Bend, Oregon 97708-6005
(541)388-6575 FAX (541)385-1764
http://www.co.deschutes.or.us/cdd/

FINDINGS

FILE NUMBER: 247-15-000308-PA

APPLICANTS: Nick Lelack, Director
Deschutes County Community Development Department
P.O. Box 6005, 117 NW Lafayette Ave.
Bend, OR 97708-6005

Jon Jinings, Community Services Specialist
Department of Land Conservation and Development
650 SW Columbia St., Millpoint Building #7100
Bend, OR 97702

Eric Nigg, Eastern Regional Water Quality Manager
Oregon Department of Environmental Quality
475 NE Bellevue, Suite 110
Bend, OR 97701

REQUEST: Amend the Deschutes County Comprehensive Plan to add an exception to Statewide Planning Goal 11 (Public Facilities and Services) to allow for sewers in unincorporated lands in southern Deschutes County; amend applicable Newberry Country Plan goals and policies regarding public facilities and groundwater; add Goal 11 map indicating affected tax lots

STAFF CONTACT: Peter Russell, Senior Transportation Planner

I. APPLICABLE CRITERIA:

Title 22, Deschutes County Development Procedures
Title 23, Deschutes County Comprehensive Plan
Newberry County: A Plan for Southern Deschutes County (addendum to Comprehensive Plan)
Oregon Revised Statute 197.732, Goal Exceptions
Oregon Administrative Rule Chapter 660, Division 4, Interpretation of Goal 2 Exceptions Process
Oregon Administrative Rule Chapter 660, Division 11, Public Facilities Planning
Oregon Administrative Rule Chapter 660, Division 12, Transportation Planning
Statewide Planning Goal 11, Public Facilities and Services
Other Statewide Planning Goals

PROPOSED PLAN AMENDMENT

The proposed amendments to Deschutes County's Comprehensive Plan are to allow rural sewers in unincorporated lands in southern Deschutes County. The exception would allow the option of sewers at varying scales, but would not require them.

The affected lands are either exception lands already; lands in other categories that are adjacent to exception lands and have existing residential settlement patterns and/or are surrounded by public lands; lands in other categories that have an existing residential settlement pattern and are surrounded by public lands.

Plan and/or policy language to be deleted is indicated by ~~strikethrough~~ while new language is <u>underlined.</u>

BACKGROUND

The La Pine sub-basin of the Upper Deschutes River is underlain by a shallow aquifer that currently supplies the primary source of drinking water for approximately 18,000 people. The soils in the region are highly porous and permeable with no impervious layer to protects the aquifer from pollution sources. In addition, the region's soils are young, pumice-based (volcanic), and relatively low in organic matter. Recharge from natural (precipitation) or human (residential onsite system discharges or irrigation) sources moves rapidly down through surface soils to the aquifer.

The water table ranges in depth from less than two feet to about thirty feet below land surface. Recharge (precipitation that reaches groundwater) from infiltration of precipitation averages 2.0 inches per year; the balance of water from precipitation evaporates, transpires, or discharges via surface runoff to rivers. Groundwater discharges in the basin include baseflow contributions to the Deschutes and Little Deschutes Rivers, evapotranspiration by vegetation, and water pumped from wells.

Regional groundwater characteristics include temperatures that are among the lowest in the state, generally 42.5 ◦F (6 ◦C) to 48.2 ◦F (9 ◦C) and high dissolved oxygen content (3 mg/L to 6 mg/L). Groundwater velocities are low and, at the water table, groundwater is generally oxic (oxygen rich conditions); however, at depths ranging from near zero to more than fifty feet below the water table it becomes suboxic (depleted oxygen conditions) and natural nitrate reduction (denitrification) can occur. Denitrification thus keeps deeper portions of the La Pine aquifer essentially nitrate-free, but the oxic portions remain vulnerable to nitrate contamination from onsite systems, the primary anthropogenic source. Nitrate contamination of the oxic groundwater is a concern in this region because the shallow oxic aquifer is the desired drinking water supply for individual domestic wells and because of the potential for nitrogen-enriched groundwater to discharge to the nitrogen-limited rivers in the region.

Development in rural areas threatens groundwater quality in southern Deschutes County through onsite system discharges. About 15,000 lots of one-half to one-acre in size were platted prior to enactment of Oregon's land use planning laws in the 1960s and 1970s. These lots are located within a corridor near the scenic Deschutes River and the Little Deschutes River. Subdivision developers marketed these lots nationally with no promise of infrastructure improvements and without an understanding of the region's high water table or the aquifer's vulnerability. Currently, there are approximately 7,000 improved lots in the La Pine region study area use conventional onsite systems and individually owned drinking water wells. Most of these wells draw from the most vulnerable upper 100 feet of the aquifer.

South Deschutes County has been the focus of extensive local, state and federal attention beginning in the early 1980s with the identification of significant groundwater impacts from onsite wastewater treatment systems in the then La Pine Unincorporated Community. Provided below is a timeline of events related to water quality in the region.

The Department of Land Conservation and Development (DLCD) in July 1996 began a program to study the more than 12,000 residential lots platted in the 1960s and '70s in an area of approximately 42 square miles, which are primarily served by on-site septic systems. The Department of Environmental Quality (DEQ) assisted with the process as did the United States Geological Survey (USGS), which produced a model of groundwater movement and pollution. The result was this area of southern Deschutes County was at risk of having nitrate levels exceed federal and state standards for drinking water. A final report was issued to DLCD in 1999.

Deschutes County had enacted a local rule in 2008 to address the problem, which would require residents to convert their existing septic systems to alternative treatment systems within 14 years. The local rule was subsequently overturned by voters in 2009. DEQ convened an advisory committee in 2010 to study the problem and that group recommended the problem be addressed with sewers rather than upgraded on-site septic systems. A sewer on rural lands requires an exception to Statewide Planning Goal 11, Public Facilities Planning. Such an exception is specifically allowed to mitigate an imminent public health hazard. The DEQ advisory committee in 2013 recommended pursuing this course.

DEQ, DLCD, and Deschutes County staff then held public meetings in April 2015 in La Pine and Sunriver to discuss the purpose of Goal 11, how an exception to Goal 11 would be processed by Deschutes County, and that a Goal 11 exception offers the option of sewers but did not mandate sewers.

AFFECTED AREA

The areas affected by the proposal are unsewered areas between Sunriver and the Klamath County border; this area is formally defined as those unincorporated portions of Deschutes County contained in Townships 19S, 20S, 21S, and 22S and Ranges 9E, 10E and 11E, except those areas authorized for sewer.

REVIEW CRITERIA

Ordinance 2016-007 adopts these findings for a Goal 11 exception to allow sewer service to rural lands in southern Deschutes County. Deschutes County lacks specific approval criteria in Deschutes County Code (DCC) Titles 18, 22, or 23 for a legislative plan and text amendment. The County is a co-applicant with DEQ, which has partnered with DLCD; these findings demonstrate compliance with the applicable Oregon Revised Statutes (ORS), Oregon Administrative Rules (OAR), Statewide Planning Goals, and the County's Comprehensive Plan. DEQ and DLCD were the subject matter experts for the ORS, OAR, and Statewide Planning Goals and prepared the findings for those areas; County staff prepared the findings that pertained to the Comprehensive Plan and Transportation Planning Rule (TPR).
The findings are organized as follows:

- Section (1) – Title 22, Deschutes County Development Procedures
- Section (2) – Title 23, Deschutes County Comprehensive Plan
- Section (3) – Newberry Country: A Plan for Southern Deschutes County

- Section (4) - ORS 197, Comprehensive Land Use Planning
- Section (5) – OAR Chapter 660, Division 4, Interpretation of Goal 2 Exceptions Process
- Section (6) - OAR Chapter 660, Division 11, Public Facilities Planning
- Section (7) – OAR Chapter 660, Division 12, Transportation Planning
- Section (8) - Statewide Planning Goal 11, Public Facilities and Services
- Section (9) - Other Statewide Planning Goals

Section (1) – Title 22, Deschutes County Development Procedures

A. CHAPTER 22.12, LEGISLATIVE PROCEDURES

1. Section 22.12.010.

Hearing Required

FINDING: The Planning Commission held public hearings on July 23, August 13, and September 10, 2015, and unanimously recommended the Board of County Commissioners approve the application as modified during the PC hearings. The Board held a public hearings on October 28, November 23, and December 9, 2015, and January 6, 2016. The Board finds this criterion has been met.

2. Section 22.12.020, Notice

Notice

A. Published Notice

1. Notice of a legislative change shall be published in a newspaper of general circulation in the county at least 10 days prior to each public hearing.

2. The notice shall state the time and place of the hearing and contain a statement describing the general subject matter of the ordinance under consideration.

FINDING: The Board finds this criterion has been met as notice was published in the Bend Bulletin newspaper on June 28, 2015, and described the proposal.

B. Posted Notice. Notice shall be posted at the discretion of the Planning Director and where necessary to comply with ORS 203.045.

FINDING: The Board finds this criterion has been met as notice was posted in the bulletin board in the lobby of the Deschutes County Community Development Department, 117 NW Lafayette, Bend as well as being posted on-line on the Planning Division website.

C. Individual notice. Individual notice to property owners, as defined in DCC 22.08.010(A), shall be provided at the discretion of the Planning Director, except as required by ORS 215.503.

FINDING: A flyer explaining the proposal was mailed to all property owners in the proposed Goal 11 exception area. The Board finds this criterion has been met.

D. Media notice. Copies of the notice of hearing shall be transmitted to other newspapers published in Deschutes County.

FINDING: Notice was provided to the County public information official for wider media distribution. The Board finds this criterion has been met.

3. Section 22.12.030 Initiation of Legislative Changes.

A legislative change may be initiated by application of individuals upon payment of required fees as well as by the Board of County Commissioners.

FINDING: The application was jointly initiated by the Deschutes County Planning Division at the direction of the Board of County Commissioners, the Department of Land Conservation and Development (DLCD), and Department of Environmental Quality (DEQ). The Board finds this criterion has been met.

4. Section 22.12.040. Hearings Body

A. The following shall serve as hearings or review body for legislative changes in this order:
1. The Planning Commission.
2. The Board of County Commissioners.

FINDING: The Board finds this criterion has been met as the order of public hearings was met by the Planning Commission holding initial public hearings on July 23 and August 13, 2015 followed by deliberations on September 10, 2015. The Board held its public hearings on October 28, November 23, and December 9, 2015, and January 6, 2016.

B. Any legislative change initiated by the Board of County Commissioners shall be reviewed by the Planning Commission prior to action being taken by the Board of Commissioners.

FINDING: The Board finds this criterion has been met as the Planning Commission public hearing preceded the Board public hearing.

5. Section 22.12.050 Final Decision

All legislative changes shall be adopted by ordinance

FINDING: Land use application 247-15-000308-PA is implemented by Ordinance 2016-007; the Board finds this criterion has been met.

Section (2) – Title 23, Deschutes County Comprehensive Plan

Chapter 2, Resource Management Section

Goal 5 Protect and improve water quality in the Deschutes River Basin.

Policy 2.5.19 *Coordinate with stakeholders to address water-related public health issues.*

a. Support amendments to State regulations to permit centralized sewer systems in areas with high levels of existing or potential development or identified water quality concerns.

b. If a public health hazard is declared in rural Deschutes County, expedite actions such as legislative amendments allowing sewers or similar infrastructure.

FINDING: This Goal 11 exception is consistent with the Comprehensive Plan, Section 2.5, Water Resource Goals and Policies, specifically Policy 2.5.19(b). The Goal 11 exception will allow sewers on rural lands in southern Deschutes County that are facing an imminent threat to public health. The Board finds this criterion has been met.

Chapter 5, Supplemental Section, Newberry Country: A Plan for Southern Deschutes County

FINDING: The Newberry Country Plan is addressed in Section 3 below.

Section 5.10, Exception Statements

FINDING: This section of the Comprehensive Plan lists all previous exception statements; there are no goals, policies, or ordinances. The exception statement is for a reasons exception from Goal 11 to allow rural sewers in southern Deschutes County to protect groundwater from nitrate incursion as adopted by Ordinance 2016-007 and will be added to the list.

The following language will be added to Section 5.10:

> A reasons exception was taken to Goal 11 to allow for sewers in the unincorporated lands of southern Deschutes County due to issues with high groundwater and nitrates.

The Board finds this criterion has been met.

Section 5.12, Legislative History

FINDING: This section of the Comprehensive Plan lists all ordinances; there are no goals, policies, or objectives. The Goal 11 reasons exception and its implementing ordinance 2016-007 and the description of its purposed will be added to the legislative history list. The Board find this criterion has been met.

Section (3) – Newberry Country: A Plan for Southern Deschutes County, 2012-2032

Goal 5 Address high groundwater lots and zoning and surveying issues.

Policy 5.1 *Develop a work plan with affected stakeholders to determine the future development and conservation potential of approximately 1,500 high groundwater lots. The work plan will need to incorporate the potential for an unknown number of lots to be served by centralized sewer or other methods of collection in the future, which would make them developable, where that possibility may not currently exist. The work plan shall, at a minimum, analyze:*

a. The impact of the newly permitted development on roads, riparian areas, wildlife habitat, and wetlands; and

b. Acquisition options such as purchasing the lots, land transfers or other ideas.

FINDING: This Goal 11 exception will allow the potential establishment of sewers on rural lands in southern Deschutes County. The provided maps and written description of the affected area

with high groundwater, i.e. depth to groundwater is 24 inches or less. A GIS analysis that included any lot with any amount of high groundwater identified approximately 3,353 high groundwater lots of which 2,153 are currently vacant. Of those vacant lots, 1,823 are zoned either Rural Residential, 10-acre minimum (RR-10) or are split-zoned RR-10 and Flood Plain (FP). The section of this document dealing with Statewide Planning Goals 5, 6, 7, 12 addresses Policy 5.1(a). As no property is being purchased at this time, Policy 5.1(b) does not apply. The Goal 11 exception is consistent with Goal 5 and its policies from the *Newberry Country* Plan.

Additionally, the Newberry Country Plan on Page 36 references a yet-unfinished DEQ process to address groundwater in southern Deschutes County. Specifically, the *Newberry Country* Plan states "[A]s of the date of this Plan's adoption, the DEQ Steering Committee is in the final stages of developing recommendations to protect the groundwater." The Plan was adopted in May 2013.

In July 2013, the DEQ released the "South Deschutes/North Klamath Groundwater Protection: Report and Recommendations." On page 5, the report states the Steering Committee unanimously approved on Jan. 9, 2013, to "[P]rovide a Goal 11 exception for the at-risk areas in South Deschutes and North Klamath counties for the following reasons…" and lists among other variables the size of lots platted prior to the 10-acre minimum begin established under the state planning system; the better treatment of nitrate reduction and other contaminants; the ability to allow sewers into the region, but that they would not be mandated; and that citizens could then to implement public sewage treatment systems.

The now-dated language on Page 36 will be amended as follows:

> ~~As of the date of this Plan's adoption, the DEQ Steering Committee is in the final stages of developing recommendations to protect the groundwater.~~
>
> On July 2013 DEQ released its "South Deschutes County/North Klamath Groundwater Protection: Report and Recommendations." The report recommended a Goal 11 exception based on the Steering Committee's unanimous approval on January 9, 2013. The Goal 11 exception was preferred for several reasons, including the size and density of residential lots that predated the establishment of the state's 10-acre minimum lot size; the ability of citizens to implement public sewage treatment, but not be mandated to choose sewers; and that centralized systems allow better treatment of nitrates and other contaminants.
>
> The Goal 11 exception was approved under land use application 247-15-000308-PA and implemented through Ordinance 2016-007, which are adopted into this plan by reference.

The Goal 11 exception is consistent with the goals and policies of the *Newberry Country* Plan; therefore the Board finds these criteria have been met.

Goal 9 Partner with the Oregon Department of Environmental Quality (DEQ) to protect groundwater and public health.

Policy 9.1 *Explore opportunities for Goal 11 exceptions and the full range of advance wastewater treatment opportunities, including but not limited to, the use of onsite alternative treatment technology, centralized sewer systems and cluster systems.*

The plan amendment would add the following language to Policy 9.1:

a. *The zoning on the properties identified in the Goal 11 exception will retain the same zoning as prior to the Goal 11 exception; the Goal 11 exception cannot be used to upzone properties to more intense land uses*

Policy 9.2 *Conduct a joint Board of County Commissioner/Planning Commission hearing in Newberry Country to:*

a. *Discuss the South County/Northern Klamath County steering committee Recommendations; and*

b. *Allow for public comments*

Policy 9.3 Implement the Steering Committee Recommendations from the 2013 DEQ Report on South Deschutes County and North Klamath

a. The County shall support efforts by DEQ to fund a groundwater testing program
b. The County shall ensure any Sanitation Authority proposed for South Deschutes County will comply with the applicable laws and administrative rules regarding the Sanitary Authority's formation
c. Continue to educate livestock owners and complaining parties by distributing the matrix "Keeping of Livestock in Rural Residential Setting: Education and Enforcement Resources" and updating the matrix as circumstances warrant.
d. Coordinate with DEQ to assess the feasibility of establishing a permitting/groundwater monitoring program for all golf courses, nurseries, commercial RV parks, manufactured/mobile home parks and other point sources.
e. The Environmental Soils Division will coordinate with DEQ on the timeline for the continued use of Alternative Treatment Technology (ATT) systems for on-site septic use.
f. Coordinate research with DEQ on how other states have established financial aid for sewage treatment solutions and propose an approach to use in southern Deschutes County.
g. Continue to involve South County residents on groundwater issues.
h. Support DEQ's efforts to assess green technology for wastewater disposal and setting of applicable performance standards.

FINDING: The proposed Goal 11 exception is expressly specified in Policy 9.1. The Board of County Commissioners and Planning Commission held a joint meeting in La Pine on July 25, 2013, to hear the recommendations from the South County/Northern Klamath County steering committee and received public comments. The proposed policy language will ensure the land use patterns are not substantially changed in southern Deschutes County. The Board finds this criterion has been met.

Section (4), ORS 197.732, Goal Exceptions

ORS 197.732 **Goal exceptions; criteria; rules; review** ***(1) As used in this section:***

(a) "Compatible" is not intended as an absolute term meaning no interference or adverse impacts of any type with adjacent uses.

(b) "Exception" means a comprehensive plan provision, including an amendment to an acknowledged comprehensive plan, that:

(A) Is applicable to specific properties or situations and does not establish a planning or zoning policy of general applicability;

(B) Does not comply with some or all goal requirements applicable to the subject properties or situations; and

(C) Complies with standards under subsection (2) of this section.

FINDING: The provisions of ORS 197.732 are further refined and interpreted by Statewide Planning Goal 2 and OAR Chapter 660, Divisions 4 and 11. The legal tests established in state statute are satisfied by adequately responding to the applicable provisions of Oregon administrative rules. Additional findings to OAR Chapter 660, Divisions 4 and 11 are provided in Sections (2) & (3) below. The Board finds these criteria have been met.

ORS 197.732(2) A local government may adopt an exception to a goal if:

(a) The land subject to the exception is physically developed to the extent that it is no longer available for uses allowed by the applicable goal;

(b) The land subject to the exception is irrevocably committed as described by Land Conservation and Development Commission rule to uses not allowed by the applicable goal because existing adjacent uses and other relevant factors make uses allowed by the applicable goal impracticable; or

(c) The following standards are met:

(A) Reasons justify why the state policy embodied in the applicable goals should not apply;

(B) Areas that do not require a new exception cannot reasonably accommodate the use;

(C) The long term environmental, economic, social and energy consequences resulting from the use at the proposed site with measures designed to reduce adverse impacts are not significantly more adverse than would typically result from the same proposal being located in areas requiring a goal exception other than the proposed site; and

(D) The proposed uses are compatible with other adjacent uses or will be so rendered through measures designed to reduce adverse impacts.

FINDING: The provisions of ORS 197.732 are further refined and interpreted by Statewide Planning Goal 2 and OAR Chapter 660, Divisions 4 and 11. The legal tests established in state statute are satisfied by adequately responding to the applicable provisions of Oregon

administrative rules. Please see additional findings to OAR Chapter 660, Divisions 4 and 11 in Sections (2) & (3) provided below. The Board finds these criteria have been met.

ORS 197.732(3) The commission shall adopt rules establishing:

> ***(a) That an exception may be adopted to allow a use authorized by a statewide planning goal that cannot comply with the approval standards for that type of use;***
>
> ***(b) Under what circumstances particular reasons may or may not be used to justify an exception under subsection (2)(c)(A) of this section; and***
>
> ***(c) Which uses allowed by the applicable goal must be found impracticable under subsection (2) of this section.***

FINDING: The provisions of ORS 197.732 are further refined and interpreted by Statewide Planning Goal 2 and OAR Chapter 660, Divisions 4 and 11. The legal tests established in state statute are satisfied by adequately responding to the applicable provisions of Oregon administrative rules. Please see additional findings to OAR Chapter 660, Divisions 4 and 11 in Sections (2) & (3) provided below. The Board finds these criteria have been met.

ORS 197.732(4) A local government approving or denying a proposed exception shall set forth findings of fact and a statement of reasons that demonstrate that the standards of subsection (2) of this section have or have not been met.

FINDING: The findings in the rest of this document provide the factual basis for the Goal 11 exception based on the standards of the applicable administrative rules and County Comprehensive Plan policies. The Board finds this criterion has been satisfied.

***ORS 197.732(5) Each notice of a public hearing on a proposed exception shall specifically note that a goal exception is proposed and shall summarize the issues in an understandable manner*.**

FINDING: The public hearing on this proposed Goal 11 exception was properly noticed. The Board finds this criterion has been satisfied.

Section (5) – OAR 660-004, Interpretation of Goal 2 Exceptions Process

660-004-0000 *Purpose*

OAR 660-004-0000(1) The purpose of this division is to interpret the requirements of Goal 2 and ORS 197.732 regarding exceptions. This division explains the three types of exceptions set forth in Goal 2 "Land Use Planning, Part II, Exceptions." Rules in other divisions of OAR 660 provide substantive standards for some specific types of goal exceptions. Where this is the case, the specific substantive standards in the other divisions control over the more general standards of this division. However, the definitions, notice, and planning and zoning requirements of this division apply to all types of exceptions. The types of exceptions that are subject to specific standards in other divisions are:

> ***(a) Standards for a demonstration of reasons for sanitary sewer service to rural lands are provided in OAR 660-011-0060(9);***

(b) Standards for a demonstration of reasons for urban transportation improvements on rural land are provided in OAR 660-012-0070;

(c) Standards to determine irrevocably committed exceptions pertaining to urban development on rural land are provided in OAR 660-014-0030, and standards for demonstration of reasons for urban development on rural land are provided in OAR 660-014-0040.

FINDING: The purpose of this Goal 11 exception proposal is to allow a sewer on rural lands in southern Deschutes County. Section 4 of this document addresses the standards specified in OAR 660-004-0000(1)(a), which directs the application to the applicable exception language at OAR 660-011-0060(9). The Board finds this criterion has been satisfied.

OAR 660-004-0000(2) An exception is a decision to exclude certain land from the requirements of one or more applicable statewide goals in accordance with the process specified in Goal 2, Part II, Exceptions. The documentation for an exception must be set forth in a local government's comprehensive plan. Such documentation must support a conclusion that the standards for an exception have been met. The conclusion shall be based on findings of fact supported by substantial evidence in the record of the local proceeding and by a statement of reasons that explains why the proposed use not allowed by the applicable goal, or a use authorized by a statewide planning goal that cannot comply with the approval standards for that type of use, should be provided for. The exceptions process is not to be used to indicate that a jurisdiction disagrees with a goal.

FINDING: This Goal 11 exception proposal is supported by facts and evidence and a statement of reasons why the proposal should be approved. These items are offered in detail in the response to the provisions of OAR 660-004-0020 & 0022 and OAR 660-011-0060(9) below. The Board finds this criterion has been satisfied.

OAR-660-004-0000(3) The intent of the exceptions process is to permit necessary flexibility in the application of the Statewide Planning Goals. The procedural and substantive objectives of the exceptions process are to:

(a) Assure that citizens and governmental units have an opportunity to participate in resolving plan conflicts while the exception is being developed and reviewed; and

(b) Assure that findings of fact and a statement of reasons supported by substantial evidence justify an exception to a statewide goal.

FINDING: This Goal 11 exception proposal was reviewed by local decision makers over the course of multiple local hearings that were open to the public. Any interested party had the opportunity to participate and present testimony. The findings of fact and statement of reasons supported by substantial evidence to justify an exception to Goal 11 were included as part of the public record. The Board finds this criterion is satisfied.

OAR 660-004-0000(4) When taking an exception, a local government may rely on information and documentation prepared by other groups or agencies for the purpose of the exception or for other purposes, as substantial evidence to support its findings of fact. Such information must be either included or properly incorporated by reference into

the record of the local exceptions proceeding. Information included by reference must be made available to interested persons for their review prior to the last evidentiary hearing on the exception.

FINDING: Deschutes County has relied upon information and documentation prepared and provided by co-applicant DEQ. It is included as an appendix. These materials were reviewed by DLCD staff and are part of the public record of the land use application 247-15-000308-PA and this implementing ordinance. The Board finds this criterion has been satisfied.

OAR 660-004-0005 Definitions For the purpose of this division, the definitions in ORS 197.015 and the Statewide Planning Goals shall apply. In addition, the following definitions shall apply:

(1) An "Exception" is a comprehensive plan provision, including an amendment to an acknowledged comprehensive plan, that:

(a) Is applicable to specific properties or situations and does not establish a planning or zoning policy of general applicability;

(b) Does not comply with some or all goal requirements applicable to the subject properties or situations; and

(c) Complies with ORS 197.732(2), the provisions of this division and, if applicable, the provisions of OAR 660-011-0060, 660-012-0070, 660-014-0030 or 660-014-0040.

(2) "Resource Land" is land subject to one or more of the statewide goals listed in OAR 660-004-0010(1)(a) through (g) except subsections (c) and (d).

(3) "Non-resource Land" is land not subject to any of the statewide goals listed in OAR 660-004-0010(1)(a) through (g) except subsections (c) and (d). Nothing in these definitions is meant to imply that other goals, particularly Goal 5, do not apply to non-resource land.

FINDING: This exception proposal does not attempt to use definitions that are different than those identified at OAR 660-004-0005 above. Therefore, the exception proposal is consistent with the ordinary definitions used to implement OAR Chapter 660, Division 4. The Board finds this criterion has been satisfied.

660-004-0010 Application of the Goal 2 Exception Process to Certain Goals

OAR 660-004-0010(1) The exceptions process is not applicable to Statewide Goal 1 "Citizen Involvement" and Goal 2 "Land Use Planning." The exceptions process is generally applicable to all or part of those statewide goals that prescribe or restrict certain uses of resource land, restrict urban uses on rural land, or limit the provision of certain public facilities and services. These statewide goals include but are not limited to:

(a) Goal 3 "Agricultural Lands"; however, an exception to Goal 3 "Agricultural Lands" is not required for any of the farm or nonfarm uses allowed in an exclusive farm use (EFU) zone under ORS chapter 215 and OAR chapter 660, division 33, "Agricultural Lands", except as provided under OAR 660-

004-0022 regarding a use authorized by a statewide planning goal that cannot comply with the approval standards for that type of use;

(b) Goal 4 "Forest Lands"; however, an exception to Goal 4 "Forest Lands" is not required for any of the forest or nonforest uses allowed in a forest or mixed farm/forest zone under OAR chapter 660, division 6, "Forest Lands";

(c) Goal 11 "Public Facilities and Services" as provided in OAR 660-011-0060(9);

(d) Goal 14 "Urbanization" as provided for in the applicable paragraph (l)(c)(A), (B), (C) or (D) of this rule:

FINDING: The purpose of this Goal 11 exception proposal is to allow a sewer on rural lands in southern Deschutes County. Section 4 of this document addresses the standards specified in OAR 660-011-0060(9), which is the applicable exception language. The Board finds this criterion has been satisfied.

OAR 660-004-0010(3) An exception to one goal or goal requirement does not ensure compliance with any other applicable goals or goal requirements for the proposed uses at the exception site. Therefore, an exception to exclude certain lands from the requirements of one or more statewide goals or goal requirements does not exempt a local government from the requirements of any other goal(s) for which an exception was not taken.

FINDING: The purpose of this Goal 11 exception proposal is to allow a sewer on rural lands in southern Deschutes County. This Goal 11 exception does not authorize relief from any other applicable Statewide Planning Goal. The Board finds this criterion has been satisfied.

660-004-0015 Inclusion as Part of the Plan

(1) A local government approving a proposed exception shall adopt, as part of its comprehensive plan, findings of fact and a statement of reasons that demonstrate that the standards for an exception have been met. The reasons and facts shall be supported by substantial evidence that the standard has been met.

(2) A local government denying a proposed exception shall adopt findings of fact and a statement of reasons that demonstrate that the standards for an exception have not been met. However, the findings need not be incorporated into the local comprehensive plan.

FINDING: ***660-004-0018 Planning and Zoning for Exception Areas***

OAR 660-004-0018

(1) Purpose. This rule explains the requirements for adoption of plan and zone designations for exceptions. Exceptions to one goal or a portion of one goal do not relieve a jurisdiction from remaining goal requirements and do not authorize uses, densities, public facilities and services, or activities other than those recognized or justified by the applicable exception. Physically developed or irrevocably committed exceptions under OAR 660-

004-0025 and 660-004-0028 and 660-014-0030 are intended to recognize and allow continuation of existing types of development in the exception area. Adoption of plan and zoning provisions that would allow changes in existing types of uses, densities, or services requires the application of the standards outlined in this rule.

FINDING: The Goal 11 exception will not change the existing zoning, uses, or densities for the affected properties. As part of the exception process, the County is amending the Newberry Country Plan policies to specifically forbid the upzoning of lands receiving the Goal 11 exception. The Board finds this criterion has been met.

OAR 660-004-0018 (2) For "physically developed" and "irrevocably committed" exceptions to goals, residential plan and zone designations shall authorize a single numeric minimum lot size and all plan and zone designations shall limit uses, density, and public facilities and services to those:

(a) That are the same as the existing land uses on the exception site;

(b) That meet the following requirements:

(A) The rural uses, density, and public facilities and services will maintain the land as "Rural Land" as defined by the goals, and are consistent with all other applicable goal requirements;

(B) The rural uses, density, and public facilities and services will not commit adjacent or nearby resource land to uses not allowed by the applicable goal as described in OAR 660-004-0028; and

(C) The rural uses, density, and public facilities and services are compatible with adjacent or nearby resource uses;

(c) For uses in unincorporated communities, the uses are consistent with OAR 660-022-0030, "Planning and Zoning of Unincorporated Communities", if the county chooses to designate the community under the applicable provisions of OAR chapter 660, division 22; and

(d) For industrial development uses and accessory uses subordinate to the industrial development, the industrial uses may occur in buildings of any size and type provided the exception area was planned and zoned for industrial use on January 1, 2004, subject to the territorial limits and other requirements of ORS 197.713 and 197.714.

FINDING: This Goal 11 exception proposal is not utilizing either the “physically developed” or “irrevocably committed” exception opportunities. Instead, this Goal 11 exception proposal is pursuing a “reasons” exception pursuant to OAR 660-004-0020 & 0022. The Board finds this criterion is not applicable.

OAR 660-004-0018(3) Uses, density, and public facilities and services not meeting section (2) of this rule may be approved on rural land only under provisions for a reasons exception as outlined in section (4) of this rule and applicable requirements of OAR 660-004-0020 through 660-004-0022, 660-011-0060 with regard to sewer service on rural lands,

OAR 660-012-0070 with regard to transportation improvements on rural land, or OAR 660-014-0030 or 660-014-0040 with regard to urban development on rural land.

FINDING: This Goal 11 exception proposal is not utilizing either the "physically developed" or "irrevocably committed" exception opportunities. Instead, this Goal 11 exception proposal is pursuing a "reasons" exception pursuant to OAR 660-004-0020 & 0022. Therefore, the Board finds this criterion is not applicable.

OAR 660-004-0018 (4) "Reasons" Exceptions:

> ***(a) When a local government takes an exception under the "Reasons" section of ORS 197.732(1)(c) and OAR 660-004-0020 through 660-004-0022, plan and zone designations must limit the uses, density, public facilities and services, and activities to only those that are justified in the exception.***
>
> ***(b) When a local government changes the types or intensities of uses or public facilities and services within an area approved as a "Reasons" exception, a new "Reasons" exception is required.***
>
> ***(c) When a local government includes land within an unincorporated community for which an exception under the "Reasons" section of ORS 197.732(1)(c) and OAR 660-004-0020 through 660-004-0022 was previously adopted, plan and zone designations must limit the uses, density, public facilities and services, and activities to only those that were justified in the exception or OAR 660-022-0030, whichever is more stringent.***

FINDING: The purpose of this Goal 11 exception proposal is to allow a sewer on rural lands in southern Deschutes County. This Goal 11 exception does not authorize any other uses that would not be permissible under the existing comprehensive plan and zoning ordinance. The Board finds this criterion has been satisfied.

Goal 2, Part II(c), Exception Requirements

OAR 660-004-0020

> ***(1) If a jurisdiction determines there are reasons consistent with OAR 660-004-0022 to use resource lands for uses not allowed by the applicable Goal or to allow public facilities or services not allowed by the applicable Goal, the justification shall be set forth in the comprehensive plan as an exception. As provided in OAR 660-004-0000(1), rules in other divisions may also apply.***

FINDING: The purpose of this Goal 11 exception is to allow sewer service to rural lands. The exception is being taken under the criteria set forth in OAR 660-011-0060(9) as required by OAR 660-004-0022. The Board finds this criterion is satisfied.

> ***(2) The four standards in Goal 2 Part II(c) required to be addressed when taking an exception to a goal are described in subsections (a) through (d) of this section, including general requirements applicable to each of the factors:***

(a) "Reasons justify why the state policy embodied in the applicable goals should not apply." The exception shall set forth the facts and assumptions used as the basis for determining that a state policy embodied in a goal should not apply to specific properties or situations, including the amount of land for the use being planned and why the use requires a location on resource land;

FINDING: In this case, the applicable state policy resides in Statewide Planning Goal 11 (*Public Facilities and Services*). The DEQ/DLCD/County seek relief from the provisions of Goal 11 that ordinarily prohibit sewer service from being provided to rural lands outside of urban growth boundaries or unincorporated communities designated pursuant to OAR Chapter 660, Division 22.

This criterion essentially requires a three-part response: 1) What "reasons" justify an exception to the state policy embodied in the applicable goals; 2) A description of the use being planned; and 3) Why the use requires a location on resource land. To try and simplify the response and clarify the request these items have been addressed below in reverse order.

Location on Resource Land

This Goal 11 exception does not request a location on resource land. Instead, sewer service would be available to residential development on lands planned and zoned for residential activities. Most of this development is existing. Some potential for future development on existing platted lots does exist.

The Use Being Planned

In most land use proposals the "use being planned" would add to the built environment by enabling development activity (residential, industrial, commercial, etc…) not otherwise allowed by the existing zoning framework. Goal 11 exceptions require a different perspective.

For example, the Land Use Board of Appeals has held that "In the context of a Goal 11 exception to extend public facilities to serve proposed development of lands outside the urban growth boundary, the 'proposed use' can only be the proposed development to be served by the facility extension and not the extended public facility." *Todd v. City of Florence,* 52)r LUBA 445 (2006)

This situation resembles *Todd* because it would authorize the establishment of sewer service in order to support existing residential development and some future residential development. This situation is unique because the facility being authorized is necessary to support the proposed use by improving the basin's groundwater quality over time. The subject lands are planned and zoned to receive residential development. Failing to authorize sewer service will eventually create unacceptable levels of contamination in the groundwater and place citizens at risk of health concerns.

Based on this explanation the "use being planned" is existing homes and some new households on lands planned and zoned for residential development. The proposed facilities would be sewer service that is not otherwise available under Goal 11. The ultimate outcome will be cleaner groundwater that will remain available as a source of drinking water for area residents and not pose a threat to contaminate nearby surface water.

Reasons

The following discussion provides facts and evidence demonstrating why the State policy ordinarily discouraging sewer service on rural lands should not apply.

Residents of south Deschutes and north Klamath counties face challenging wastewater disposal conditions. The area has porous, sandy, pumice soil derived from volcanic events and a shallow, vulnerable aquifer, both of which allow for the potential contamination of drinking water. These local conditions are unusual, as other parts of the state have finer silt and clay-like subsurface soil that can form a protective layer above the groundwater.

Historical groundwater contamination in the downtown core of La Pine offers a good illustration of the challenges facing much of the region. Studies of groundwater contamination, hydrology and the effects of nitrates were conducted in southern Deschutes County beginning in the late 1970s. Well monitoring and analysis in the City of La Pine was performed in response to very high nitrate concentrations in drinking water.[3] Nitrate concentrations in drinking water wells commonly exceeded the drinking water standard of 10 mg/L nitrate-nitrogen and were elevated as high as 42 mg/L and were linked to wastewater disposal from individual septic systems. Elevated (above natural background) levels of nitrate-nitrogen entering groundwater are likely to also be associated with other wastewater contaminants entering the groundwater.

Contamination in La Pine became so severe in the early 1980s that the city constructed a sewer system providing better treatment and land disposal of wastewater in order to reduce nitrogen concentrations in drinking water supplies. The operation of this sewer system resulted in markedly improved groundwater quality in town. Monitoring wells for the wastewater treatment plant have demonstrated steadily improving groundwater conditions following improved treatment and disposal.

This historical contamination is both evidence of the vulnerability of the groundwater aquifer and a cause for concern throughout the region, as the soil and groundwater conditions in La Pine are similar to those throughout much of southern Deschutes and northern Klamath counties.

Other surveys and studies over the years all point to increasing groundwater contamination throughout the region. A survey of groundwater data in 1993 and mathematical modeling in 1995 by DEQ indicated elevated nitrate concentrations and concern for future aquifer-wide increases. Recent sampling of monitoring wells in the area demonstrated a small but statistically significant increase in nitrate concentration between 1995 and 2011.

The U.S. Geological Survey completed a La Pine National Demonstration Project and mathematical modeling effort in 2007. The demonstration project was designed to test innovative treatment technologies that would reduce nitrogen loading to groundwater from onsite systems. USGS also produced a three-dimensional mathematical model to estimate the effects of nitrates in the shallow aquifer of a large area in southern Deschutes and northern Klamath counties.[5]

These studies have generally reached the conclusion that the groundwater aquifer is vulnerable to increasing concentrations of nitrates and other contaminants associated with domestic sewage. The USGS study predicted nitrate concentrations increasing above the federally adopted drinking water standard throughout the area over time. Concentrations would increase for about 140 years after full build-out, at which time more than 9,000 acres would have groundwater concentrations exceeding 10 mg/L.

DEQ and Deschutes County have been working cooperatively for more than a decade to find an appropriate solution to this growing concern. In 2008, the County adopted ordinances effectively requiring advanced treatment technology systems that would reduce nitrate concentrations in wastewater. One of the ordinances was repealed as the result of a successful citizens' referendum vote in 2009 to overturn the ordinances and the other was repealed by the Board of County Commissioners in 2011. In October 2009, Deschutes County Commissioners requested that DEQ take over the effort to find appropriate solutions to the increasing groundwater contamination caused by wide use of onsite wastewater treatment and disposal.

Since that time, DEQ has engaged a steering committee comprised of Deschutes and Klamath County citizens to consider local circumstances and make recommendations for a long-term solution. DEQ received the recommendations from the committee in summer 2013.[6] One of those recommendations was to pursue an area wide Goal 11 exception to allow a broader range of options for domestic wastewater treatment and disposal.

Deschutes County attempted to address the area-wide groundwater problem through various ordinances and requirements. After those ordinances were repealed and rescinded, the County asked DEQ to take the lead in groundwater protection. DEQ then began conducting site-by-site groundwater risk assessments to determine which sites were required to install Advanced Treatment Technologies (ATTs) with nitrogen-reducing capabilities.

While the nitrogen-reducing ATT's provide the best treatment options currently available under existing state land-use planning laws, they do not truly address the long-term problem or offer the best level of groundwater protection for the area as a whole. As steering committee members acknowledged in their recommendations, the area would be best served by allowing more options to deal with the larger concerns of area-wide contamination. The steering committee also acknowledged the limitations of the ATT requirement and recommended a moratorium on such systems until a more comprehensive solution could be made available to land owners.

The steering committee realized that such options would require an area-wide exception to state planning laws, and they recommended DEQ and Deschutes County pursue a Goal 11 exception. DEQ agrees with this recommendation because an exception to Goal 11 provides residents with a tool to pursue meaningful and long-term groundwater protection in a way that is not currently available to them.

An area-wide Goal 11 exception would allow for an acceptable level of wastewater control and is necessary to protect public health in the area over the long term. The Oregon Health Authority wrote a statement about the risk to people in the region due to drinking contaminated groundwater. The statement addresses not only nitrates but also contamination from fertilizers, pesticides, pharmaceuticals and personal care products. The full statement from the Oregon Health Authority can be found in the appendix.

The Board finds this criterion is satisfied.

(b) "Areas that do not require a new exception cannot reasonably accommodate the use". The exception must meet the following requirements:

FINDING: Areas that do not require a new exception cannot reasonably accommodate the use because, as described above, the use in this case is single family dwellings on lands planned and zoned for residential development. This Goal 11 exception proposal will create the legal

ability to support existing homes and some future households with sewer service, which is necessary to preserve the integrity of the area's groundwater. The existing homes and lands planned and zoned for development will continue to occupy their current locations and will continue to utilize local aquifers as a domestic water source. Utilizing a different area is not possible.

The Board finds this criterion has been satisfied.

(A) The exception shall indicate on a map or otherwise describe the location of possible alternative areas considered for the use that do not require a new exception. The area for which the exception is taken shall be identified;

FINDING: To best protect public health, the proposed exception area includes unincorporated portions of Deschutes County contained in Townships 19, 20, 21, 22 and Ranges 9, 10, 11, except those areas already authorized for sewers (see Map at Exhibit A). This is the general area in Deschutes County studied by the USGS. Deschutes County determined that this area is necessary for groundwater protection and where groundwater was determined to be vulnerable to contamination from individual onsite wastewater systems.

The exception area includes all existing platted lots and other lands necessary for community water supply and wastewater treatment infrastructure. No upzoning or increases of development densities other than allowed by current zoning shall occur within the Goal 11 exception area.

The Board finds this criterion is satisfied.

(B) To show why the particular site is justified, it is necessary to discuss why other areas that do not require a new exception cannot reasonably accommodate the proposed use. Economic factors may be considered along with other relevant factors in determining that the use cannot reasonably be accommodated in other areas. Under this test the following questions shall be addressed:

(i) Can the proposed use be reasonably accommodated on non-resource land that would not require an exception, including increasing the density of uses on non-resource land? If not, why not?

FINDING: The proposed use cannot be reasonably accommodated on non-resource and that would not require and exceptions because, as described above, the use in this case is single family dwellings on lands planned and zoned for residential development. This Goal 11 exception proposal will create the legal ability to support existing homes and some future households with sewer service, which is necessary to preserve the integrity of the area's groundwater. The existing homes and lands planned and zoned for development will continue to occupy their current locations and will continue to utilize local aquifers as a domestic water source. Utilizing a different area is not possible.

The Board finds this criterion has been satisfied.

(ii) Can the proposed use be reasonably accommodated on resource land that is already irrevocably committed to non-resource uses not allowed by the applicable Goal, including resource land in existing

unincorporated communities, or by increasing the density of uses on committed lands? If not, why not?

FINDING: The proposed use cannot be reasonably accommodated on resource land that is already irrevocably committed to non-resource uses not allowed by the applicable goal because, as described above, the use in this case is single-family dwellings on lands planned and zoned for residential development. This Goal 11 exception proposal will create the legal ability to support existing homes and some future households with sewer service, which is necessary to preserve the integrity of the area's groundwater. The existing homes and lands planned and zoned for development will continue to occupy their current locations and will continue to utilize local aquifers as a domestic water source. Utilizing a different area is not possible.

The Board finds this criterion is satisfied.

(iii) Can the proposed use be reasonably accommodated inside an urban growth boundary? If not, why not?

FINDING: The proposed use cannot be reasonably accommodated inside an urban growth boundary because, as described above, the use in this case is single-family dwellings on lands planned and zoned for residential development. This Goal 11 exception proposal will create the legal ability to support existing homes and some future households with sewer service, which is necessary to preserve the integrity of the area's groundwater. The existing homes and lands planned and zoned for development will continue to occupy their current locations and will continue to utilize local aquifers as a domestic water source. Utilizing a different area is not possible.

The Board finds this criterion is satisfied.

(iv) Can the proposed use be reasonably accommodated without the provision of a proposed public facility or service? If not, why not?

FINDING: In this Goal 11 exception proposal the "use being planned" is existing homes and some new households on lands planned and zoned for residential development. The proposed facilities would be sewer service that is not otherwise available under Goal 11.

Existing and possible residential development in these areas cannot be reasonably accommodated without the opportunity to receive sewer service because, as described in this document, sewer service is necessary to guard against unacceptable levels of pollution in the area's groundwater that would expose citizens to health risks.

The ultimate outcome will be cleaner groundwater that will remain available as a source of drinking water for area residents and not pose a threat to contaminate nearby surface water.

The Board finds this criterion is satisfied.

(C) The "alternative areas" standard in paragraph B may be met by a broad review of similar types of areas rather than a review of specific alternative sites. Initially, a local government adopting an exception need assess only whether those similar types of areas in the vicinity could not reasonably accommodate the proposed use. Site specific comparisons are not required of a local government taking an exception unless another party to

the local proceeding describes specific sites that can more reasonably accommodate the proposed use. A detailed evaluation of specific alternative sites is thus not required unless such sites are specifically described, with facts to support the assertion that the sites are more reasonable, by another party during the local exceptions proceeding.

(c) "The long-term environmental, economic, social and energy consequences resulting from the use at the proposed site with measures designed to reduce adverse impacts are not significantly more adverse than would typically result from the same proposal being located in areas requiring a goal exception other than the proposed site." The exception shall describe: the characteristics of each alternative area considered by the jurisdiction in which an exception might be taken, the typical advantages and disadvantages of using the area for a use not allowed by the Goal, and the typical positive and negative consequences resulting from the use at the proposed site with measures designed to reduce adverse impacts. A detailed evaluation of specific alternative sites is not required unless such sites are specifically described with facts to support the assertion that the sites have significantly fewer adverse impacts during the local exceptions proceeding. The exception shall include the reasons why the consequences of the use at the chosen site are not significantly more adverse than would typically result from the same proposal being located in areas requiring a goal exception other than the proposed site. Such reasons shall include but are not limited to a description of: the facts used to determine which resource land is least productive, the ability to sustain resource uses near the proposed use, and the long-term economic impact on the general area caused by irreversible removal of the land from the resource base. Other possible impacts to be addressed include the effects of the proposed use on the water table, on the costs of improving roads and on the costs to special service districts;

FINDING: The "use being planned" is existing homes and some new households on lands planned and zoned for residential development. The proposed facilities would be sewer service that is not otherwise available under Goal 11. The ultimate outcome will be cleaner groundwater that will remain available as a source of drinking water for area residents and not pose a threat to contaminate nearby surface water.

The Board finds this criterion is satisfied.

(d) "The proposed uses are compatible with other adjacent uses or will be so rendered through measures designed to reduce adverse impacts." The exception shall describe how the proposed use will be rendered compatible with adjacent land uses. The exception shall demonstrate that the proposed use is situated in such a manner as to be compatible with surrounding natural resources and resource management or production practices. "Compatible" is not intended as an absolute term meaning no interference or adverse impacts of any type with adjacent uses.

FINDING: The "use being planned" is existing homes and some new households on lands planned and zoned for residential development. The proposed facilities would be sewer service

that is not otherwise available under Goal 11. The ultimate outcome will be cleaner groundwater that will remain available as a source of drinking water for area residents and not pose a threat to contaminate nearby surface water.

The Board finds this criterion is satisfied.

> ***(3) If the exception involves more than one area for which the reasons and circumstances are the same, the areas may be considered as a group. Each of the areas shall be identified on a map, or their location otherwise described, and keyed to the appropriate findings.***

FINDING: To best protect public health, the proposed exception area includes unincorporated portions of Deschutes County contained in Townships 19, 20, 21, 22 and Ranges 9, 10, 11, except those areas already authorized for sewers (see Map at Exhibit A). This is the general area in Deschutes County studied by the USGS. Deschutes County determined that this area is necessary for groundwater protection and where groundwater was determined to be vulnerable to contamination from individual onsite wastewater systems.

The exception area includes all existing platted lots and other lands necessary for community water supply and wastewater treatment infrastructure. No up-zoning or increases of development densities other than allowed by current zoning shall occur within the Goal 11 exception area.

The Board finds this criterion is satisfied.

> ***(4) For the expansion of an unincorporated community described under OAR* 660-022-0010 *, including an urban unincorporated community pursuant to OAR 660-022-0040 (2), the reasons exception requirements necessary to address standards 2 through 4 of Goal 2, Part II(c), as described in of subsections (2)(b), (c) and (d) of this rule, are modified to also include the following:***

FINDING: The exception does not involve an expansion of an unincorporated community described under OAR 660-022-0010. Therefore, the Board finds the provisions of OAR 660-004-0020(4) are not applicable and are not required to be addressed further.

Reasons Necessary to Justify an Exception Under Goal 2, Part II(c)

OAR 660-004-0022 An exception under Goal 2, Part II(c) may be taken for any use not allowed by the applicable goal(s) or for a use authorized by a statewide planning goal that cannot comply with the approval standards for that type of use. The types of reasons that may or may not be used to justify certain types of uses not allowed on resource lands are set forth in the following sections of this rule. Reasons that may allow an exception to Goal 11 to provide sewer service to rural lands are described in OAR 660-011-0060. Reasons that may allow transportation facilities and improvements that do not meet the requirements of OAR 660-012-0065 are provided in OAR 660-012-0070. Reasons that rural lands are irrevocably committed to urban levels of development are provided in OAR 660-014-0030. Reasons that may justify the establishment of new urban development on undeveloped rural land are provided in OAR 660-014-0040.

FINDING: The exception is being taken under the criteria set forth in OAR 660-011-0060(9). The Board finds this criterion has been satisfied.

660-004-0030 Notice and Adoption of an Exception

> ***(1) Goal 2 requires that each notice of a public hearing on a proposed exception shall specifically note that a goal exception is proposed and shall summarize the issues in an understandable manner.***
>
> ***(2) A planning exception takes effect when the comprehensive plan or plan amendment is adopted by the city or county governing body. Adopted exceptions will be reviewed by the Commission when the comprehensive plan is reviewed for compliance with the goals through the acknowledgment or periodic review processes under OAR chapter 660, divisions 3 or 25, and by the Board when a plan amendment is reviewed as a post-acknowledgment plan amendment pursuant to OAR chapter 660, division 18.***

FINDING: The public notice for all public hearings identified the proposed land use action was for an exception to Goal 11 and summarized the issue in an understandable manner. The Board finds this criterion has been met.

Section (6) – OAR 660-011, Public Facilities Planning

OAR 660-011-0045 Adoption and Amendment Procedures for Public Facility Plans

> ***(1) The governing body of the city or county responsible for development of the public facility plan shall adopt the plan as a supporting document to the jurisdiction's comprehensive plan and shall also adopt as part of the comprehensive plan:***
>
> > ***(a) The list of public facility project titles, excluding (if the jurisdiction so chooses) the descriptions or specifications of those projects;***
> > ***(b) A map or written description of the public facility projects' locations or service areas as specified in sections (2) and (3) of this rule; and***
> > ***(c) The policy(ies) or urban growth management agreement designating the provider of each public facility system. If there is more than one provider with the authority to provide the system within the area covered by the public facility plan, then the provider of each project shall be designated.***

FINDING: No public facility plan is necessary as part of the Goal 11 exception proposal. The Board finds this criterion has been satisfied.

OAR 660-011-0060, Sewer Service to Rural Lands

> ***(1) As used in this rule, unless the context requires otherwise:***
>
> > ***(a) "Establishment of a sewer system" means the creation of a new sewage system, including systems provided by public or private entities;***
> >
> > ***(b) "Extension of a Sewer System" means the extension of a pipe, conduit, pipeline, main, or other physical component from or to an***

existing sewer system in order to provide service to a use, regardless of whether the use is inside the service boundaries of the public or private service provider. The sewer service authorized in Section (8) of this rule is not an extension of a sewer;

(c) "No practicable alternative to a sewer system" means a determination by the Department of Environmental Quality (DEQ) or the Oregon Health Division, pursuant to criteria in OAR chapter 340, division 71, and other applicable rules and laws, that an existing public health hazard cannot be adequately abated by the repair or maintenance of existing sewer systems or on-site systems or by the installation of new on-site systems as defined in OAR 340-071-0100;

(d) "Public health hazard" means a condition whereby it is probable that the public is exposed to disease-caused physical suffering or illness due to the presence of inadequately treated sewage;

(e) "Sewage" means the water-carried human, animal, vegetable, or industrial waste from residences, buildings, industrial establishments or other places, together with such ground water infiltration and surface water as may be present;

***(f) "Sewer system" means a system that serves more than one lot or parcel, or more than one condominium unit or more than one unit within a planned unit development, and includes pipelines or conduits, pump stations, force mains, and all other structures, devices, appurtenances and facilities used for treating or disposing of sewage or for collecting or conducting sewage to an ultimate point for treatment and disposal. The following are not considered a "sewer system" for purposes of this rule: ***

(A) A system provided solely for the collection, transfer and/or disposal of storm water runoff;

(B) A system provided **solely for the collection, transfer and/or disposal of animal waste from a farm use as defined in ORS 215.303.**

FINDING: The exception is consistent with the provisions of OAR 660-011-0060(1) because it does not propose or rely on different definitions than contained therein. The Board finds this criterion has been satisfied.

OAR 660-011-0060(2) Except as provided in sections (3), (4), (8), and (9) of this rule, and consistent with Goal 11, a local government shall not allow:

(a) The establishment of new sewer systems outside urban growth boundaries or unincorporated community boundaries;

(b) The extension of sewer lines from within urban growth boundaries or unincorporated community boundaries in order to serve uses on land outside those boundaries;

(c) The extension of sewer systems that currently serve land outside urban growth boundaries and unincorporated community

boundaries in order to serve uses that are outside such boundaries and are not served by the system on July 28, 1998.

FINDING: The exception is consistent with the provisions of OAR 660-011-0060(2) because it does not propose to allow sewer service to rural lands without taking an exception as specified under OAR 660-011-0060(9). The Board finds this criterion has been met.

OAR 660-011-0060(3) Components of a sewer system that serve lands inside an urban growth boundary (UGB) may be placed on lands outside the boundary provided that the conditions in subsections (a) and (b) of this section are met, as follows:

(a) Such placement is necessary to:

(A) Serve lands inside the UGB more efficiently by traversing lands outside the boundary;

(B) Serve lands inside a nearby UGB or unincorporated community;

(C) Connect to components of the sewer system lawfully located on rural lands, such as outfall or treatment facilities; or

(D) Transport leachate from a landfill on rural land to a sewer system inside a UGB;

(b) The local government:

(A) Adopts land use regulations to ensure the sewer system shall not serve land outside urban growth boundaries or unincorporated community boundaries, except as authorized under section (4) of this rule; and

(B) Determines that the system satisfies ORS 215.296(1) or (2) to protect farm and forest practices, except for systems located in the subsurface of public roads and highways along the public right-of-way.

FINDING: The exception is consistent with the provisions of OAR 660-011-0060(3) because it does not propose to allow sewer service to rural lands without taking an exception as specified under OAR 660-011-0060(9). The Board finds this criterion is satisfied.

OAR 660-011-0060(4) A local government may allow the establishment of a new sewer system, or the extension of an existing sewer system, to serve land outside urban growth boundaries and unincorporated community boundaries in order to mitigate a public health hazard, provided that the conditions in subsections (a) and (b) of this section are met, as follows:

(a) The DEQ or the Oregon Health Division initially:

(A) Determines that a public health hazard exists in the area;

(B) Determines that the health hazard is caused by sewage from development that existed in the area on July 28, 1998;

(C) Describes the physical location of the identified sources of the sewage contributing to the health hazard; and

(D) Determines that there is no practicable alternative to a sewer system in order to abate the public health hazard; and

(b) The local government, in response to the determination in subsection (a) of this section, and based on recommendations by DEQ and the Oregon Health Division where appropriate:

(A) Determines the type of sewer system and service to be provided, pursuant to Section (5) of this rule;

(B) Determines the boundaries of the sewer system service area, pursuant to section (6) of this rule;

(C) Adopts land use regulations that ensure the sewer system is designed and constructed so that its capacity does not exceed the minimum necessary to serve the area within the boundaries described under paragraph (B) of this subsection, except for urban reserve areas as provided under OAR 660-021-0040(6);

(D) Adopts land use regulations to prohibit the sewer system from serving any uses other than those existing or allowed in the identified service area on the date the sewer system is approved;

(E) Adopts plan and zone amendments to ensure that only rural land uses are allowed on rural lands in the area to be served by the sewer system, consistent with Goal 14 and OAR 660-004-0018, unless a Goal 14 exception has been acknowledged;

(F) Ensures that land use regulations do not authorize a higher density of residential development than would be authorized without the presence of the sewer system; and

***(G) Determines that the system satisfies ORS 215.296(1) or (2) to protect farm and forest practices, except for systems located in the subsurface of public roads and highways along the public right-of-way*.**

FINDING: The exception is consistent with the provisions of OAR 660-011-0060(4) because it does not propose to allow sewer service to rural lands without taking an exception as specified under OAR 660-011-0060(9). The Board finds this criterion has been met.

OAR 660-011-0060(5) Where the DEQ determines that there is no practicable alternative to a sewer system, the local government, based on recommendations from DEQ, shall determine the most practicable sewer system to abate the health hazard considering the following:

(a) The system must be sufficient to abate the public health hazard pursuant to DEQ requirements applicable to such systems; and

(b) New or expanded sewer systems serving only the health hazard area shall be generally preferred over the extension of a sewer system from an urban growth boundary. However, if the health hazard area is within the service area of a sanitary authority or district, the sewer system operated by the authority or district, if available and sufficient, shall be preferred over other sewer system options.

FINDING: The exception is consistent with the provisions of OAR 660-011-0060(5) because it does not propose to allow sewer service to rural lands without taking an exception as specified under OAR 660-011-0060(9). The Board finds this criterion has been met.

OAR 660-011-0060(6) The local government, based on recommendations from DEQ and, where appropriate, the Oregon Health Division, shall determine the area to be served by a sewer system necessary to abate a health hazard. The area shall include only the following:

(a) Lots and parcels that contain the identified sources of the sewage contributing to the health hazard;

(b) Lots and parcels that are surrounded by or abut the parcels described in subsection (a) of this section, provided the local government demonstrates that, due to soils, insufficient lot size, or other conditions, there is a reasonably clear probability that onsite systems installed to serve uses on such lots or parcels will fail and further contribute to the health hazard.

FINDING: The exception is consistent with the provisions of OAR 660-011-0060(6) because it does not propose to allow sewer service to rural lands without taking an exception as specified under OAR 660-011-0060(9). The Board finds this criterion has been met.

OAR 660-011-0060(7) The local government or agency responsible for the determinations pursuant to sections (4) through (6) of this rule shall provide notice to all affected local governments and special districts regarding opportunities to participate in such determinations.

FINDING: The exception is consistent with the provisions of OAR 660-011-0060(7) because it does not propose to allow sewer service to rural lands without taking an exception as specified under OAR 660-011-0060(9). The Board finds this criterion has been met.

OAR 660-011-0060(8) A local government may allow a residential use to connect to an existing sewer line provided the conditions in subsections (a) through (h) of this section are met:

(a) The sewer service is to a residential use located on a parcel as defined by ORS 215.010(1), or a lot created by subdivision of land as defined in ORS 92.010;

(b) The parcel or lot is within a special district or sanitary authority sewer service boundary that existed on January 1, 2005, or the parcel is partially within such boundary and the sewer service provider is willing or obligated to provide service to the portion of the parcel or lot located outside that service boundary;

(c) ***The sewer service is to connect to a residential use located within a rural residential area, as described in OAR 660-004-0040, which existed on January 1, 2005;***

(d) ***The nearest connection point from the residential parcel or lot to be served is within 300 feet of a sewer line that existed at that location on January 1, 2005;***

(e) ***It is determined by the local government to be practical to connect the sewer service to the residential use considering geographic features or other natural or man-made constraints;***

(f) ***The sewer service authorized by this section shall be available to only those parcels and lots specified in this section, unless service to other parcels or lots is authorized under sections (4) or (9) of this rule;***

(g) ***The existing sewer line, from where the nearest connection point is determined under subsection (8)(d) of this rule, is not located within an urban growth boundary or unincorporated community boundary; and***

(h) ***The connection of the sewer service shall not be relied upon to authorize a higher density of residential development than would be authorized without the presence of the sewer service, and shall not be used as a basis for an exception to Goal 14 as required by OAR 660-004-0040(6).***

FINDING: The exception is consistent with the provisions of OAR 660-011-0060(3) because it does not propose to allow sewer service to rural lands without taking an exception as specified under OAR 660-011-0060(9). The Board finds this criterion has been met.

OAR 660-011-0060(9) A local government may allow the establishment of new sewer systems or the extension of sewer lines not otherwise provided for in section (4) of this rule, or allow a use to connect to an existing sewer line not otherwise provided for in section (8) of this rule, provided the standards for an exception to Goal 11 have been met, and provided the local government adopts land use regulations that prohibit the sewer system from serving any uses or areas other than those justified in the exception. Appropriate reasons and facts for an exception to Goal 11 include but are not limited to the following:

(a) ***The new system, or extension of an existing system, is necessary to avoid an imminent and significant public health hazard that would otherwise result if the sewer service is not provided; and, there is no practicable alternative to the sewer system in order to avoid the imminent public health hazard, or***

(b) ***The extension of an existing sewer system will serve land that, by operation of federal law, is not subject to statewide planning Goal 11 and, if necessary, Goal 14.***

FINDING: Paragraphs (9)(a) and (9)(b) above represent two possible ways for an exception to Goal 11 to be justified. However, DEQ and DLCD find that this language is not exclusive. In other words, it may be possible to justify an exception to Goal 11 under circumstances that are neither (9)(a) or (9)(b).

After decades of studies and monitoring, DEQ has determined that there is a growing health threat of groundwater contamination caused by onsite septic systems in the area of south Deschutes and north Klamath counties. We are convinced public health can best be protected through a range of treatment and disposal options not allowed under State Planning Goal 11. Steering committee members came to this same general understanding after studying the issue for more than three years, and DEQ agrees with their recommendations.

Many studies over the years show groundwater contamination in the La Pine study area. Most recently, the USGS studies and reports indicated a slow-moving but expanding plume of human effluent-tainted groundwater. Over time, that plume will spread to deep areas of the aquifer and will become so widespread that the drinking water becomes unusable. There is a real threat from nitrates, pharmaceuticals, personal hygiene byproducts and organic wastewater compounds entering groundwater. The current trend must be reversed to protect human health in the long term. This contamination is occurring at a rate that allows for some planning; the threat to public health is not imminent, but it is inevitable.

The decision to submit a Goal 11 exception is not one DEQ took lightly. However, this exception could provide solutions residents can use to address area-wide and long-term groundwater contamination. It also is a solution that applies only to existing and platted lots, so it does not create additional sprawl or promote greater growth. It simply could provide community sewer options for existing residents, including those on lots which pre-dated statewide planning laws.

An area-wide Goal 11 exception would allow for the highest and best level of wastewater control and is necessary to protect public health in the area. The area requires a regional solution to what is truly an area-wide problem, one with increasing risks the longer a set of comprehensive solutions is not in place. Up to this point, public agencies including DEQ have looked at individual property risk on a site by site basis. This strategy will fail because it prohibits greater regional planning and infrastructure to address a significant and regional public health risk.

The area's shallow, unprotected groundwater and pumice sandy soils mean that water soluble substances put on or in the ground will likely end up in the groundwater. While use of fertilizer, pesticides and livestock manure can contribute contaminants to the groundwater, most groundwater contamination in this area comes from onsite septic systems. All onsite systems in the region – standard septic, sand filter and ATT systems – discharge contaminants into the ground. Over time, many of these contaminants drain through the sandy, porous soil and reach the groundwater that can be within 2 feet of the ground surface in some areas.

This risk is compounded by the relatively high density of development in the area, as more than 75 percent of the approximately 14,000 properties in the area are two acres or less. Add in the fact that there is little precipitation in the area to dilute contaminants and the problem became clear: too many septic systems were discharging into porous soil and over time there would be increasing contamination of the shallow, vulnerable aquifer that many people were using as their drinking water supply.

Finally, DEQ does not believe the area can achieve adequate environmental and human health protection without the ability to implement community sewer options for the south Deschutes and north Klamath area. For all of these reasons, DEQ supports the application for an area-wide Goal 11 exception.

The Board finds this criterion has been met.

References

[1]Oregon Health Authority Fact Sheet on Nitrates, available at http://public.health.oregon.gov/HealthyEnvironments/DrinkingWater/Monitoring/HealthEffects/Pages/nitrate.aspx.

[2]The U.S. Environmental Protection Agency's Drinking Water Standards are available at http://water.epa.gov/drink/contaminants/index.cfm.

[3]Century West Engineering, 1982, La Pine aquifer management plan: Bend, Oregon, Century West Engineering, 597 p.

[4]Williams, J.S., D.S. Morgan and S.R. Hinkle. 2007. Questions and answers about the effects of septic systems on water quality in the La Pine area, Oregon. USGS Factsheet 2007-3103. http://pubs.usgs.gov/fs/2007/3103/

[5]Morgan, D.S., S.R. Hinkle, R.J. Weick. 2007. Evaluation of approaches for managing nitrate loading from on-site wastewater systems near La Pine, Oregon USGS Scientific Investigations Report 2007-5237 http://pubs.usgs.gov/sir/2007/5237/

[6]ODEQ. 2013. South Deschutes/North Klamath Groundwater Protection: Report and Recommendations. Nigg, E. and R. Baggett. 32 pp. http://www.deq.state.or.us/wq/onsite/docs/SDNKreportrec.pdf

Section (7) – OAR 660, Division 12, Transportation Planning

OAR 660-012-0060 Plan and Land Use Regulation Amendments

(1) If an amendment to a functional plan, an acknowledged comprehensive plan, or a land use regulation (including a zoning map) would significantly affect an existing or planned transportation facility, then the local government must put in place measures as provided in section (2) of this rule, unless the amendment is allowed under section (3), (9) or (10) of this rule. A plan or land use regulation amendment significantly affects a transportation facility if it would:

(a) Change the functional classification of an existing or planned transportation facility (exclusive of correction of map errors in an adopted plan);

(b) Change standards implementing a functional classification system; or

(c) Result in any of the effects listed in paragraphs (A) through (C) of this subsection based on projected conditions measured at the end of the planning period identified in the adopted TSP. As part of evaluating projected conditions, the amount of traffic projected to be generated within the area of the amendment may be reduced if the amendment includes an enforceable, ongoing requirement that would demonstrably limit traffic generation, including, but not limited to, transportation demand management. This reduction may diminish or completely eliminate the significant effect of the amendment.

(A) Types or levels of travel or access that are inconsistent with the functional classification of an existing or planned transportation facility;

(B) Degrade the performance of an existing or planned transportation facility such that it would not meet the performance standards identified in the TSP or comprehensive plan; or

(C) Degrade the performance of an existing or planned transportation facility that is otherwise projected to not meet the performance standards identified in the TSP or comprehensive plan.

FINDING: The Goal 11 exception will not change the functional classification of any County roads or State highways; nor will it change performance standards of any County roads or State highways. The operational aspects are discussed in more detail below.

Any vacant lot that GIS research indicated had high groundwater was considered a red lot, regardless if the high groundwater area consisted of 1% or 100% of the lot. This identified 1,823 vacant lots as red lots, which the County's traffic consultant, Kittelson & Associates, then analyzed. The County's adopted Transportation System Plan (TSP) has a horizon year of 2030. To be consistent with the TSP, the traffic study also assumed a horizon year of 2030. GIS research indicates in the proposed Goal 11 exception area 1,610 dwellings developed between 1975-2015. Given it took 40 years to construct 1,610 dwellings in the study area, it is highly doubtful all 1,823 vacant high groundwater lots will develop in 15 years. Therefore the study used the historic annual average of residential development of 40 units (1,610 units/40 years). Finally, while there are still vacant lots that are not red lots, for analysis purposes the traffic study assumed all lots that developed at the historic rate for the next 15 years would be limited only to the red lots. By 2030 that results in 600 new dwellings (40 units per year X 15 years) on the red lots.

In Board Ordinance 2013-059, the County arrived at a local p.m. peak hour trip generation rate for single-family residences of 0.81 trips per dwelling. This was based on 2010 Census data regarding primary and secondary residences; the local rate was used in the development of the County's transportation system development charge (SDC). The Institute of Traffic Engineers (ITE) Trip Generation Manual, 9th edition, indicates a single-family home (Land Use Category 210) generates at a rate of 1.0 p.m. peak hour trips per dwelling. The ITE also has a fitted formula of 0.88 p.m. peak hour trips per dwelling. Based on local trip generation rate from the SDC, observed volumes on County roads in the area indicating many residences are not occupied full-time, and the ITE range for single-family dwellings spans 0.42 trips to 2.98 trips per dwelling, staff and its consultant agreed on a trip generation rate of 0.88 p.m. peak hour trips per dwelling.

The 600 new dwellings will produce 528 new p.m. peak hour trips (600 units X 0.88 trips per unit). The 528 p.m. peak hour trips were distributed in the same geographic patterns as field observations demonstrated current vehicles follow. The traffic analysis also assumed 1.7% annual growth in background traffic, which is consistent with the transportation/land use model used in the County's TSP.

Based on the trip generation rate and background volumes, only two intersections fail to meet mobility standards in 2030. The two intersections were:

- Spring River Road/South Century Drive

- Sixth Street/US 97 in La Pine

The Deschutes County TSP at Table 5.3.T1 “County and Highway Projects” has a roundabout planned for the intersection of Spring River/South Century Drive. This project is a medium priority, meaning construction is planned between 6 and 10 years from the TSP’s 2012 adoption. Specific design details will be done prior to construction, but this planned improvement is sufficient mitigation for the traffic from the red lots.

The adopted City of La Pine TSP acknowledges the Sixth Street/US 97 intersection fails. The TSP has policy language regarding filling in a City grid system to the west of the intersection to offload Sixth Street/US 97 and redirect traffic to First Street/US 97, where a traffic signal is currently under construction.

While the Goal 11 exception will result in traffic that is a significant effect under OAR 660-012-0060(2)(c)(A through C) these planned improvements mitigate the transportation impacts.

Based on the traffic analysis and the planned improvements listed in the County TSP and the City of La Pine TSP the Goal 11 exception will not have any of the significant results. Finally, the Goal 11 exception amendment includes amended policy language in the Newberry Country Plan under Policy 9.1 that the option of having a sewer serving a rural property cannot be used to upzone the property to a more intensive use. Therefore traffic levels will not increase beyond the current RR-10 zoning allows and which planned improvements will adequately serve.

The Board finds this criterion has been met.

(2) If a local government determines that there would be a significant effect, then the local government must ensure that allowed land uses are consistent with the identified function, capacity, and performance standards of the facility measured at the end of the planning period identified in the adopted TSP through one or a combination of the remedies listed in (a) through (e) below, unless the amendment meets the balancing test in subsection (2)(e) of this section or qualifies for partial mitigation in section (11) of this rule. A local government using subsection (2)(e), section (3), section (10) or section (11) to approve an amendment recognizes that additional motor vehicle traffic congestion may result and that other facility providers would not be expected to provide additional capacity for motor vehicles in response to this congestion.

(a) Adopting measures that demonstrate allowed land uses are consistent with the planned function, capacity, and performance standards of the transportation facility.

(b) Amending the TSP or comprehensive plan to provide transportation facilities, improvements or services adequate to support the proposed land uses consistent with the requirements of this division; such amendments shall include a funding plan or mechanism consistent with section (4) or include an amendment to the transportation finance plan so that the facility, improvement, or service will be provided by the end of the planning period.

(c) Amending the TSP to modify the planned function, capacity or performance standards of the transportation facility.

(d) Providing other measures as a condition of development or through a development agreement or similar funding method, including, but not

limited to, transportation system management measures or minor transportation improvements. Local governments shall, as part of the amendment, specify when measures or improvements provided pursuant to this subsection will be provided.

(e) Providing improvements that would benefit modes other than the significantly affected mode, improvements to facilities other than the significantly affected facility, or improvements at other locations, if the provider of the significantly affected facility provides a written statement that the system-wide benefits are sufficient to balance the significant effect, even though the improvements would not result in consistency for all performance standards.

(3) Notwithstanding sections (1) and (2) of this rule, a local government may approve an amendment that would significantly affect an existing transportation facility without assuring that the allowed land uses are consistent with the function, capacity and performance standards of the facility where:

(a) In the absence of the amendment, planned transportation facilities, improvements and services as set forth in section (4) of this rule would not be adequate to achieve consistency with the identified function, capacity or performance standard for that facility by the end of the planning period identified in the adopted TSP;

(b) Development resulting from the amendment will, at a minimum, mitigate the impacts of the amendment in a manner that avoids further degradation to the performance of the facility by the time of the development through one or a combination of transportation improvements or measures;

(c) The amendment does not involve property located in an interchange area as defined in paragraph (4)(d)(C); and

(d) For affected state highways, ODOT provides a written statement that the proposed funding and timing for the identified mitigation improvements or measures are, at a minimum, sufficient to avoid further degradation to the performance of the affected state highway. However, if a local government provides the appropriate ODOT regional office with written notice of a proposed amendment in a manner that provides ODOT reasonable opportunity to submit a written statement into the record of the local government proceeding, and ODOT does not provide a written statement, then the local government may proceed with applying subsections (a) through (c) of this section.

FINDING: As detailed above, the County and City of La Pine TSPs already have planned mitigations for the two intersections, Spring River Road/South Century Drive and Sixth Street/US 97, adversely affected by the traffic from the vacant red lots if those lots became developable. The State highway system already has mitigations identified and prioritized between Bend and La Pine in the County's adopted TSP. The combination of existing grade-separated interchanges at US 97/Cottonwood and US 97/South Century Drive, a programmed traffic signal with intersection improvements at US 97/1st-Reed in La Pine in 2016, and the planned widening of US 97 to four lanes the entire length between Bend and La Pine provides

the highway with enough capacity to easily accommodate any trips from the currently vacant high groundwater lots.

Additionally, the County collects an SDC of $3,044 per dwelling unit, which will increase to $3,120 on July 1, 2015. The projected red lot development of 604 new dwellings will contribute nearly $1.9 million dollars in SDCs (604 X $3,120). The TSP estimates the Spring River Road/South Century Drive roundabout will cost $900,000. The combination of SDCs coupled with the State gas tax revenues the County receives based on numbers of registered vehicles ensures there is adequate funding for future improvements to mitigate the traffic from the red lots.

The Board finds this criterion has been met.

Section (8) – Statewide Planning Goal 11, Public Facilities and Services

OAR 660-015-0000(11) "Local Governments shall not allow the establishment or extension of sewer systems outside urban growth boundaries or unincorporated community boundaries, or allow extensions of sewer lines from within urban growth boundaries or unincorporated community boundaries to serve land outside those boundaries, except where the new or extended system is the only practicable alternative to mitigate a public health hazard and will not adversely affect farm or forest land.

FINDING: Goal 11 is implemented by OAR Chapter 660, Division 11, which is fully addressed in Section 3 of this document. Therefore, Goal 11 has been adequately considered. The Board finds this criterion has been met.

Section (9) - Other Statewide Planning Goals

The parameters for evaluating these specific amendments are based on an adequate factual base and supportive evidence demonstrating consistency with Statewide Planning Goals. The following findings demonstrate the proposed Goal 11 exception complies with applicable statewide planning goals.

Goal 1, Citizen Involvement

FINDING: The topic of nitrates, high groundwater, and South County residential lots, both vacant and developed, has been the subject of numerous public meetings and public hearings since 1996. In the latest instance, DEQ formed an advisory committee in 2010 to study the problem and that group after more than 50 public meetings recommended the high groundwater issue be addressed by sewers on rural lands, which requires a Goal 11 exception. DEQ, DLCD, and Deschutes held open houses in Sunriver and La Pine in April 2015 to summarize the Goal 11 exception process and alerting attendees of a mid-July public hearing. The County also sent flyers to approximately 10,500 properties in southern Deschutes County. The flyers briefly summarized the Goal 11 process, provided a website for further information, listed staff contacts at DEQ and Deschutes County, and gave the time, date, and place for the initial July 23 Planning Commission public hearing. The Board finds this criterion has been met.

Goal 2, Land Use Planning

FINDING: The Goal 11 exception is being processed consistent with Deschutes County's development code for legislative plan amendments, applicable state statutes, and administrative rules. The public could testify at either the July 23 or August 13, 2015, public hearings before

the Planning Commission or at the October 28, 2015, public hearing before the Board of County Commissioners. The Board finds this criterion has been met.

Goal 3, Agricultural Lands

FINDING: The plurality of lands are zoned RR-10. There a few Exclusive Farm Use (EFU) lands south of the City of La Pine in the area proposed for a Goal 11 exception. The land is south of Masten Road and east of OR 31. They were included due to them being high ground water lots. Given the large size of the EFU properties especially when compared to the RR-10 properties, the EFU properties will continue to use septic systems. The Board finds this criterion has been met.

Goal 4, Forest Land

FINDING: The plurality of lands are zoned RR-10. There are few Forest (F1 or F2) lands included in the Goal Exception. They were included either because they were high groundwater lots, were adjacent to exception lands, or were adjacent to an existing residential settlement pattern. The Board finds this criterion has been met.

Goal 5, Natural Resources, Scenic and Historic Areas, and Open Spaces

FINDING: The Goal 11 exception only allows the potential to later develop sewer systems of varying scales on rural lands. The exception itself will not affect any Goal 5 resource. The Goal 5 resources would only be affected by later construction of actual sewers or cluster systems at which time actual Goal 5 resources in specific locations would need to be addressed to ensure their continual protection. Additionally, the Goal 11 exception is needed to protect groundwater and rivers from the subsurface movement of nitrates. The Board finds this criterion has been met.

Goal 6, Air, Water and Land Resources Quality

FINDING: The Goal 11 exception is needed to protect the quality of water from pollution from nitrates. The subsurface basin is the source of drinking water for approximately 18,000 people. A Goal 11 exception would offer the option of rural sewers of varying scales to prevent the further degradation of the water of the La Pine sub-basin. See the attached state and federal reports. The Board finds this criterion has been satisfied.

Goal 7, Natural Hazards

FINDING: Nitrates are not one of the listed natural hazards under Goal 7; additionally, the nitrates are primarily related to failing on-site septic systems and thus have a human source; the Board finds this criterion is not applicable.

Goal 8, Recreational Needs

FINDING: Sewers are functional, not recreational. Additionally, the Goal 11 exception only offers the potential for rural sewers at varying scales and sewer would most likely be used on properties with RR-10 zoning. Recreational uses would not be adversely affected. Goal 8 destination resorts are exempt from Goal 11. The Board finds this criterion has been met.

Goal 9, Economic Development

FINDING: The Goal 11 exception would indirectly assist to economic development in two ways. First, if rural sewers of varying scales are allowed, then high groundwater lots that are now unbuildable could become buildable. Constructing homes would be a form of economic development. Second, if vacant high-groundwater lots become viable, they could then offer housing opportunities for employees who work in La Pine, Sunriver, or Bend. The Board finds this criterion has been met.

Goal 10, Housing

FINDING: While primarily an urban goal, a Goal 11 exception could let 1,823 vacant high groundwater lots that are now vacant to become potentially buildable. Given the current lack of affordable housing in Deschutes County, increasing the supply of housing would be beneficial to help meet the region's housing needs. The Board finds this criterion is met.

Goal 11, Public Facilities

FINDING: Addressed in Section 5 of this document.

Goal 12, Transportation

FINDING: Addressed in Section 4 of this document.

Goal 13, Energy Conservation

FINDING: A Goal 11 exception would allow for residential infill at a rural scale. The Board finds this criterion has been met.

Goal 14, Urbanization

FINDING: The Goal 11 exception by definition affects rural lands that are exception areas. The Goal 11 exception would allow the potential of sewers at varying scales to serve lands zoned RR-10. These previously platted lands are often in the half-acre to one-acre size, so they are more toward the urban side of the rural-urban continuum. Any resulting sewers would only serve lands in their current zoning. The Board finds this criterion has been met.

Goals 15 through 19

FINDING: The Board finds this is not applicable to any amendments to the County's Comprehensive Plan because the County has none of those types of lands.